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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/475,696	12/30/1999	DARRYL L. DEFRESE	A-6307	6730

5642 7590 08/31/2009
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EXAMINER

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ART UNIT	PAPER NUMBER
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2435

NOTIFICATION DATE	DELIVERY MODE
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08/31/2009

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/475,696
Filing Date: December 30, 1999
Appellant(s): DEFREESE ET AL.

David Rodack
Reg. no. 47,034
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/1/09 appealing from the Office action mailed 4/9/09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,862,268	Campbell et al	8-1989
4,718,107	Hayes	1-1988

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6,067,564 Urakoshi et al 5-2000

5,420,866 Wasilewski 5-1995

Applicant's admitted prior art as discussed in (p2, lines 10-18) of the instant application.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 95 is rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al (US 4,862,268) in view of Hayes (4,718,107).

Claim 95:

Campbell discloses:

1. A tuner (Fig 6, tuner 106).
2. A processor (Fig 6, converter control logic unit 104) configured to control the tuner (Fig 6, tuner 108), the processor configured to:
 - a. Receiving an entitlement unit table (EUT), the EUT comprising an identifier of a first service and one or more entitlement unit numbers (EUNs) that each uniquely identify a service package that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first service (Fig 11 and col 12, lines 60-64). *The data transmitted seen in Figure 11 can be considered an EUT since it is an orderly arrangement of data comprising an identifier of a first service and one or more EUNs that each uniquely identify a service package that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first*

service. The tier code 202 is at least one field that can be considered an EUN and as discussed in column 13, lines 9-11, the tier code defines the level of access required for the program in question and is used to determine whether a particular program can legally be accessed by a subscriber. Channel number 216 is at least one field that can be considered an identifier of a first service. Note that other fields of the data seen in Figure 11 can also be interpreted to be EUNs and a first identifier.

- b. Responsive to the user selection of the first service, determining whether the at least one of the one or more EUNs matches an authorized EUN (Fig 12, steps 310, 320, 322, and 324; col 12, lines 16-25; col 15, lines 7-66).
- c. Tuning to the selected first service (Fig 12, steps 310 and 316).

Campbell does not explicitly disclose the tuning is done responsive to determining that there is a match between the one or more EUNs and the authorized EUN. However, first recall that the tier code 202 seen in Figure 11 can be considered an EUN and is used to determine whether or not to allow a user access to one or more programs/services. Further, Hayes discloses receiving a user's channel selection (i.e. selection of a first service), determining whether the user should be allowed to access the channel or not, and responsive to this determination, tuning to the selected channel (col 5, lines 6-21).

In light of Hayes's teachings, it would have been obvious to one skilled in the art at the time applicant's invention was made, to modify Campbell's teachings such that

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after a user selects a first service, rather than tuning to the channel which provides the first service, the tuning is done in response to determining there is a match between the one or more EUNs and the authorized EUN. One skilled would have been motivated to do so as a matter of design choice--whether one tunes to a selected first service before or after determining that there is a match between one or more EUNs and the authorized EUN does not really matter as long as the content of the first service is not descrambled except for authorized users; the end result of content protection is the same. Further, substituting the elements in Campbell's invention which decides when the tuning actually occurs based on Hayes's teachings in the manner discussed is nothing more than simple substitution of one known element for another to achieve the predictable result of not tuning unless the one or more EUNs match an authorized EUN.

Claims 85, 89, and 105 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al (US 4,862,268) in view of Hayes (4,718,107) in further view of Urakoshi et al (US 6,067,564).

Claim 85:

Much of the limitations recited in claim 85 are substantially similar to what is recited in claim 95 and these limitations are rejected for similar reasons discussed above in the rejection of claim 95. Claim 85 further requires that the user selection of the first service if done from an electronic program guide (EPG). This limitation is disclosed by Urakoshi (col 7, lines 11-15 and col 8, lines 2-6).

At the time applicant's invention was made, it would have been obvious to one skilled in the art to modify Campbell and Hayes combination's invention using Urakoshi's teachings such that the user selects a first service from an EPG. One skilled in the art would have been motivated to allow a user to select services from a program guide because as disclosed by Urakoshi, use of a program guide would allow a user to recognize at a glance which programs can be viewed and which cannot at current settings and understand why they are so presented (col 8, lines 2-6). Note that use of a program guide to select services is also obvious because it is applying a known technique to a known device ready for improvement to yield predictable results.

Claim 89:

Campbell further discloses responsive to the tuning, determining whether the selected service is an authorized service (Figs 12 and 17 and col 15, lines 16-66).

Claim 105:

Campbell does not explicitly disclose the processor is further configured to provide an electronic program guide (EPG) that enables the user to select the first service. However, this limitation is disclosed by Urakoshi (col 7, lines 11-15 and col 8, lines 2-6).

At the time applicant's invention was made, it would have been obvious to one skilled in the art to modify Campbell's invention such that processor is further configured to provide an electronic program guide that enables the user to select the first service. The rationales for why it would have been obvious to one of ordinary skill are the same as what was discussed in claim 85.

Claims 86-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al (US 4,862,268) in view of Hayes (4,718,107) in further view of Urakoshi et al (US 6,067,564) in further view of applicant's admitted prior art (herein referred to as AAPA) as discussed in the specification of the current application.

Claim 86:

Campbell does not explicitly disclose receiving the EUT in an encrypted format. However, the EUT of Campbell contains tier data (see Fig 11) and as disclosed by AAPA, such data is often encrypted by the headend and received in an encrypted format (p2, lines 10-18). As such, it would have been obvious to one of ordinary skill in the art to further modify Campbell's invention such that the EUT was received in an encrypted format. One skilled would have been motivated to do so because data such as tier data in Campbell's EUT is often received in encrypted format in prior art conditional access systems.

Claim 87:

Campbell does not explicitly disclose wherein receiving comprises receiving the EUT in a nonencrypted format. However, the EUT of Campbell contains tier data (see Fig 11) and as disclosed by AAPA, such data is often received in encrypted format. This implies that at times, such data is received in nonencrypted format since AAPA did not state that such data is always received in encrypted format. As such, it would have been obvious to one skilled in the art to modify Campbell's invention such that the EUT

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was received in nonencrypted format. One skilled would have been motivated to do as a matter of design choice. As discussed by AAPA, certain data is received in either encrypted or nonencrypted format.

Claims 88 and 90-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al (US 4,862,268) in view of Hayes (4,718,107) in further view of Urakoshi et al (US 6,067,564) in further view of Wasilewski (US 5,420,866).

Claim 88:

Campbell does not explicitly disclose wherein receiving comprises receiving the EUT from an MPEG-compliant transport stream. However, Wasilewski discloses that receiving conditional access data from MPEG-compliant transport streams was well known in the art at the time applicant's invention was made (col 4, lines 51-66). Campbell's EUT contains conditional access data (Fig 11). At the time applicant's invention was made, it would have been obvious to one skilled in the art to modify Campbell's invention such that the EUT was received from an MPEG-compliant transport stream. One skilled would have been motivated to do so because Wasilewski discloses that MPEG was adopted as a standard for transporting one or more data streams (col 1, lines 14-18). It would also have been obvious to one skilled in the art to modify Campbell's invention to receive the EUT from an MPEG-compliant transport stream because it is simple substitution of one known element for another to obtain

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predictable results. In this case, one is merely substituting the type of stream used to transport the EUT from the headend to the receiver.

Claim 90:

Campbell does not explicitly disclose wherein determining whether the selected first service is an authorized service comprises: receiving an encrypted entitlement control message (ECM); and decrypting the encrypted ECM to reveal encrypted control words and the one or more EUNs, the encrypted control words corresponding to elementary streams of the selected first service and the one or more EUNs.

However, Wasilewski discloses a conditional access system which uses encrypted ECM to transport control words and other conditional access data from a headend to a receiver; the ECM disclosed by Wasilewski is received and decrypted to reveal encrypted control words and one or more conditional access data; the encrypted control words corresponding to the elementary stream of a first selected service and the one or more conditional access data (col 4, lines 7-25; col 6, lines 17-26; and col 9, lines 37-col 10, line 28). Note that the EUNs of Campbell's invention contain conditional access data (Fig 11).

At the time applicant's invention was made, it would have been obvious to one skilled in the art to modify Campbell's invention in light of Wasilewski's teachings such that determining whether the selected first service is an authorized service comprises: receiving an ECM; and decrypting the encrypted ECM to reveal encrypted control words and the one or more EUNs, the encrypted control words corresponding to elementary streams of the selected first service and the one or more EUNs. One skilled would have

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been motivated to modify Campbell's invention using Wasilewski's teachings in the manner discussed because use of control words as per Wasilewski's teachings to secure services would further ensure that only authorized subscribers can have access to specific services. One skilled would have been motivated to transport the EUN in ECM because Wasilewski discloses that the format of an ECM is not dictated, thus is open to design preferences (col 4, lines 26-27).

Claim 91:

Campbell further discloses wherein determining whether the selected first service is an authorized first service further comprises: determining whether the at least one of the one or more EUNs matches an authorized EUN (Figs 12 and 17; col 12, lines 16-15; and col 15, lines 7-66).

Claim 92:

As per claim 92, the limitation of decrypting the encrypted control words responsive to determining that there is a match between the one or more EUNs and the authorized EUN is obvious to the combined teachings of Campbell and Wasilewski. As seen in Figures 12 and 17 of Campbell, descrambling is only done if there is a match between the one or more EUNs and the authorized EUN. As per Wasilewski's teachings, the encrypted control words are used for descrambling the services (Fig 6 and Fig 8A and col 14, lines 9-20). As such, a person of ordinary skill having common sense and ordinary creativity would recognize that since descrambling of a service is only done if there is a match between the one or more EUNs and the authorized EUN, there is no need to decrypt the encrypted control word except if there is a match. One

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of ordinary skill in the art would have been motivated to only decrypt the encrypted control word if there is a match between the one or more EUNs and the authorized EUN to avoid unnecessary steps being carried out and to avoid needlessly exposing the control words.

Claim 93:

Wasilewski further discloses decrypting the elementary streams of the selected first service based on the decrypted control words (Fig 6 and Fig 8A and col 14, lines 9-20).

Claim 94:

Wasilewski further discloses wherein receiving the encrypted ECM comprises receiving the encrypted ECM from an MPEG-compliant transport stream (col 4, lines 7-12).

Claims 96-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al (US 4,862,268) in view of Hayes (4,718,107) in further view of applicant's admitted prior art (herein referred to as AAPA) as discussed in the specification of the current application.

Claims 96-97:

Claims 96-97 recites the processor is further configured to perform steps of a method similar to what is recited in claims 86-87 respectively, thus claims 96-97 are rejected over the additional teachings of AAPA for much the same reasons discussed in the rejection of claims 86-87 respectively.

Claims 98-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al (US 4,862,268) in view of Hayes (4,718,107) in further view of Wasilewski (US 5,420,866).

Claims 98-104:

Claims 98-104 recites the processor is further configured to perform steps of a method similar to what is recited in claims 88-94 respectively, thus claims 98-104 are rejected over the additional teachings of Wasilewski for much the same reasons discussed in the rejection of claims 88-94 respectively.

(10) Response to Argument

For the reasons that follow, the Office requests that the rejections of claims 85-105 as set forth in the Final Rejection mailed on 4/9/09 (hereinafter "FR") be sustained by the Board. The same headings that were used in the appeal brief filed on 7/1/09 (hereinafter "AB") will be used in this response to argument so that the reader may more easily follow how appellant's arguments are being traversed.

A. Rejection of Claim 95 under 35 USC 103(a): Campbell in view of Hayes

Appellant argues in AB6 that the features as recited in claim 95 are not obvious and that the proposed combination of Campbell and Hayes is improper because the tuning-before-determination aspect of Campbell is necessary to the principle of operation and its modification according to Hayes (i.e. where the tuning occurs after

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determination) would not only change this principle of operation, but likely render Campbell unsatisfactory for its intended purpose. The Office respectfully submits that this argument is clearly incorrect as the combination of Campbell and Hayes as proposed in the FR would not change the principle of operation of Campbell nor will it render Campbell unsatisfactory for its intended purpose.

The term “entitlement unit number” (i.e. EUN) as recited in claim 95 was not a common term in the art at the time appellant’s invention was made. This fact was never disputed by appellant. Thus to determine what an EUN is, one must look to the claim itself, which defines an EUN as something “that uniquely identify a service package that comprise one or more services available to the use”. As discussed in FR4-5, going by this definition recited in the claim, the Office sets forth the position that the transmitted data seen in Figure 11 of Campbell can be considered an entitlement unit table (EUT) and that the tier code 202 is at least one field that can be considered an EUN. Note that other fields in Figure 11 can also be considered an EUN since the definition of an EUN as set forth in the claim is so broad. That the tier code can be considered an EUN as defined by the claim is not in dispute by appellant.

For the limitation of “responsive to user selection of the first service, determining whether at least one of the one or more EUNs match an authorized EUN”, the Office cited Figure 12, steps 310-324; column 12, lines 15-25; and col 15, lines 7-66 of Campbell. Note that there was an obvious typo in the FR in referring to column 12, lines 16-**15** instead of lines 16-**25**. Regardless of this typo, note however, that in cited step 310 of Figure 12, a user selects a first service by entering a channel number, i.e.

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via a remote control or keyboard. Responsive to this user selection of the first service by the user, in steps 320-324, Campbell's invention makes several comparisons of several fields seen in Figure 11 which could be considered EUNs to determine whether or not there is a match between an EUN and an authorized EUN. Both the Office and appellant agree that the program tier code can be considered an EUN. Column 12, lines 16-25 discusses how Campbell's invention compares a program tier code (i.e. obtained from the data transmitted seen in Figure 11) with a subscriber's tier code to determine if the subscriber can have access to a particular tier. Thus the subscriber's tier code can be considered equivalent to the claimed authorized EUN and since it is compared with the program tier code to see if access is allowed, the limitation of "determining whether at least one of the one or more EUNs match an authorized EUN" is met. Note that a similar analysis could be made if one instead viewed the program event code as the EUN. One would then view the subscriber's authorized event code as the authorized event code and their comparison is seen also in the cited portions of Figure 12.

That the program tier code and subscriber's authorized tier code disclosed by Campbell can be considered equivalent to the claimed EUN and authorized EUN is not in dispute by appellant. It is also not in dispute that combining Campbell's invention with Hayes would result in a combined invention meeting the limitations as claimed in claim 95. What is in dispute then is whether the modification to Campbell as discussed in the FR would render Campbell's invention inoperative for its intended purpose and if it would change Campbell's principle of operation.

It is appellant's position (see AB7-8) that the control data seen in Figure 11 is transmitted on the vertical blanking interval (VBI) from the headend, thus to access the vertical blanking interval, Campbell's invention must first tune to a particular channel—the one selected by the user when the user chooses a first service. Because of this, appellant argues that it is impossible to modify Campbell's invention in the manner discussed by the Office in the FR so that tuning occurs responsive to determining that there is a match between the one or more EUNs and the authorized EUN without changing Campbell's principle of operation thereby rendering Campbell's invention inoperative for its intended purpose. The examiner respectfully submits that contrary to appellant's arguments, in Campbell's invention, access to the control data is independent of tuning to any particular programming channel/first service selected by the user.

Note that in Campbell's invention, he allows for one way of transmitting the control data as seen in Figure 11 via one or more dedicated channels used only for text data transmission (col 6, lines 52-61). Note that these text data contain the control data seen in Figure 11 (col 5, lines 7-37). Since separate dedicated channels which uses an entire television signal frame are utilized to transmit the control data, tuning to a particular user selected programming channel/first service is not required to access the control data as appellant is arguing. As such, in modifying Campbell's invention based on Hayes's teachings in the manner discussed in the FR so that tuning to a user selected channel occurs after determining, Campbell's invention would not be rendered unsatisfactory for its intended purpose of subscriber access control nor would it change

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Campbell's principle of operation since one can still gain access to the control data seen in Figure 11 for comparison without tuning to a user selected programming channel/first service. Appellant did not even address this aspect of Campbell's invention in the AB when analyzing whether or not the modification to Campbell as proposed by the Office would render his invention inoperative for its intended purpose. Note that since these data channels are dedicated, one skilled having common sense should appreciate that the data in these dedicated channels could be accessed in several manners, all without having to tune to a user selected channel first. One way might be to access the data channel having the control data "out of band", for example, where they are accessed independently of any user's action and perhaps even continuously.

Campbell also contemplates another method of transmitting the control data seen in Figure 11, which appellant discusses in AB7-9. However, appellant analyzes this second method of control data transmission incorrectly. According to appellant, since the control data is in the VBI of a video stream, the only way to access it is to first tune to the programming channel containing the video stream, i.e. the one selected by the subscriber/user. This is clearly incorrect. As recognized by appellant, in this second method of transmitting the control data, the control data is transmitted via insertion into lines 17 and 18 of the VBI of a video signal (Fig 2A; col 5, lines 6-53; and col 6, lines 8-38). After combining a program source signal with control signals, the program-control signals from many channel processors are combined together to form a CATV signal 21 (see Figure 2).

In Figure 6 of Campbell, one can see that at RF/Data Separator 100, a CATV RF Input signal is received (see upper left side of the figure). From Figure 2 as well as from column 8, lines 48-64, one can see that this CATV RF Input signal (i.e. signal 21 seen in Figure 2) is a signal that was created by combining not only control data, but also programming signals from many television channels, i.e. programming channels. RF/Data Separator 100 seen in Figure 6 separates the received CATV RF Input signal into subscriber control data (i.e. as seen in Figure 11) and into RF data-loaded television signals (i.e. which contains the television programmings that subscribers watch)—again refer to column 8, lines 48-64 for discussion. Note that the subscriber control data (i.e. SCB) is further transmitted via line 102 seen in Figure 6 where it enters the Converter Control Logic Unit 104. The RF signal goes to Tuner 106. As can clearly be seen from the cited portions, tuning to a particular programming channel/first service is not required for Campbell's invention to access the control data that was encoded into the VBI for determination purposes.

Converter Control Logic Unit 104 controls Tuner Control 108, which in turns controls Tuner 106 (col 9, line 45-col 10, line 4). In the cited portion of Campbell's invention, one can see that Campbell's invention decides whether or not to tune to a particular programming channel based solely on the user's input via a keyboard or remote control. After tuning, Campbell's invention decides whether there is a match between the EUN (i.e. programming tier code) and the authorized EUN (i.e. the subscriber's programming tier code which describes which programming tiers a user is

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allowed to access). Based on this decision, the user is permitted viewing of the program or not via descrambling of the selected channel's programming.

Hayes's teachings, as discussed by the Office in FR5-6 shows that rather than making the decision of whether or not to allow a subscriber to view a particular programming/first service after tuning to the user selected channel, this decision can occur before tuning to the user selected channel and that the tuning is done in response to this determination (col 5, lines 6-21). As such, based on the combined teachings of Campbell and Hayes, the limitations as recited in claim 95 would have been obvious. It would have been obvious to modify Campbell's invention, based on Hayes's teachings, such that the tuning occurs not just after the user's selection of a first service (i.e. by entering a channel number) but also in response to determining if the user is allowed to view the selected service, i.e. by making the determination as per Campbell's teachings if the EUN matches an authorized EUN (i.e. does the programming tier code match the subscriber's authorized tier code).

Appellant argues that in Campbell's invention, enabling access to the codes for purposes of comparison requires tuning first and then accessing information from the video frame field. As can be seen from the above discussion, this is false. Appellant failed to consider that in one embodiment, Campbell allowed for the control data to be transmitted via a separate dedicated channel than the video signal which is tuned to for viewing, thus does not require tuning to the user selected channel first. Based on this alone, the rejection should be sustained since appellant failed to fully consider the

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teachings of the references as a whole and as a result failed to fully address the rejection set forth by the Office.

Appellant also misinterpreted Campbell's teachings and as seen from the above discussion, even if the control data was encoded into the VBI of a video signal (i.e. as seen in Figure 2A), tuning to the first service first is not required for accessing the control codes since the control codes can be and are separated from the video signal (i.e. RF in Figure 6) even before the signal was inputted to the tuner—the separation being done by RF/Data Separator 100 seen in Figure 6.

Appellant argues in the last two sentences in AB7 and in AB8 that the Office relied upon Hayes's teachings to meet the deficiency by Campbell of having to tune first to access the control data. However, this is incorrect. As can be seen from the previous discussion, there was no such deficiency in Campbell to be corrected by Hayes. Campbell transmits control data in at least two ways which does not require first tuning to the first service before the control data can be accessed. The control data could be accessed either via a separate dedicated data channel(s) or by separating them from the CATV RF Input signal prior to any tuning to a user selected first service by a tuner.

In AB9, appellant argues that the motivation given in the FR is insufficient because the proposed modification to Campbell would render Campbell's operation unsatisfactory and that it would change his principle of operation. Since, appellant's analysis of Campbell has been shown to be not only incomplete, but also erroneous, appellant's last argument for claim 95 is traversed.

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As can be seen from the above discussion, combining Campbell's teachings with Hayes to achieve the invention as claimed in claim 95 would not render Campbell's invention inoperative as appellant claims nor would it change any of Campbell's principles of operation. Appellant failed to discuss at all where in one embodiment, Campbell handles control data transmission where the control data is transmitted via separate dedicated channels from the video data a user can select for viewing (col 6, lines 52-60). Using the transmission method in this embodiment, the control data could be accessed from the dedicated data channels independently of any user action and of any tuning to any user selected first service. This alone is sufficient to have the rejection sustained because appellant has failed to fully consider the teachings of the references and has failed to fully address the Office's rejection setting forth a *prima facie* case of obviousness. The modification of Campbell's invention where he uses separate dedicated data channels with Hayes's teachings would indeed meet the limitations as recited in claim 95 (this is not in dispute) and it would not change Campbell's principle of operation nor would it render Campbell's invention unsatisfactory for its intended purpose. Further, the modification of Campbell's invention where the control data is encoded into the VBI of programs using Hayes's teachings would also meet the limitations as recited in claim 95 and it would not change Campbell's principle of operation since the control data can be and is separated from the video service even before requiring any actions by the user or the tuner. In both cases, the control data are available for determining prior to tuning.

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Appellant's arguments for claim 85 are the same as what was presented for claim 95 and are traversed for the same reasons. The remaining arguments are that the dependent claims are allowable because independent claims 85 and 95 are allowable. However, because the arguments for the independent claims are traversed, the dependent claims are also not allowable.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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